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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-834

ROSALIND MCCLANAHAN,
Appellant,

v.

ARIZONA STATE TAX COMMISSION,
Appellee.

On Appeal from the Supreme Court of Arizona

BRIEF FOR AMICUS CURIAE, ESTATE OF ROSE MASON, DECEASED, IN SUPPORT OF APPELLANT

STATEMENT OF INTEREST

This brief is filed with the consent of both parties.

Rose Mason, deceased, was a restricted Osage Indian living on the Osage Reservation in Oklahoma, who died owning various properties held in trust for her by the United States. The State of Oklahoma imposed a tax on her estate, and the United States, as her trustee,

voluntarily paid the tax out of her estate (it now concedes, we believe, that the tax does not lie). Her successors brought suit in the Court of Claims to require the United States to repay the estate. The Court of Claims allowed judgment, and allowed the United States a right over against Oklahoma. *Mason* v. *United States*, —— F.2d —— (Ct. Cl. Docket No. 417-70, decided June 16, 1972).

The Court of Claims' opinion was based on its finding that this Court's opinion in *Squire* v. *Capoeman*, 351 U.S. 1 (1956), had overruled *West* v. *Oklahoma Tax Commission*, 334 U.S. 717 (1948), by implication. It is possible that either the United States or Oklahoma will seek review in this Court from that decision dated June 16, 1972. It is also possible that the *West* case will be discussed by this Court in disposing of the instant case. Therefore, because of the latter possibility, the successors of Rose Mason as amici curiae wish respectfully to call the Court's attention to their hope that the *West* case will not be inadvertently revived or extended, or at least that judgment on its current viability be deferred until the *Mason* case reaches this Court for full briefing and argument.

The reason we think this Court might discuss the *West* case is that it allowed (1) a state tax to be imposed on (2) the restricted trust property (3) of a restricted Indian (4) residing on a tribally-governed reservation (5) wherein the state did not have general jurisdiction under Public Law 280 or otherwise. Elements (1), (4) and (5), and probably (3), are present in the instant case. Consequently, the *West* case would seem to offer some support for the proposition that Arizona may impose its income tax in the instant case, that is, if one were not aware of the impact of the *Capoeman* case on the *West* case, and of the decisions of lower courts in cases since the *Capoeman* case.

ARGUMENT

In lieu of argument that the *West* case is no longer good law, we present in the Appendix hereto the applicable portion of the Court of Claims' opinion in the *Mason* case. That portion is quoted verbatim from the Court of Claims slip opinion of June 16, 1972, pages 15-21. The opinion was by Judge Davis, and was concurred in by Chief Judge Cowan and Judges Durfee, Nichols and Kunzig. Judge Skelton dissented.

CONCLUSION

For the reasons set forth in the *Mason* opinion quoted in the Appendix, the *West* case is under a grave cloud, to say the least, and should not be relied on as good law, at least until after the full briefing and argument which will occur in the *Mason* case if review in this Court is sought and granted.

Respectfully submitted,

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July 21, 1972